

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1266

Cir. Ct. No. 2015SC9684

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

GARY KRAMSCHUSTER AND SANDRA KRAMSCHUSTER,

PLAINTIFFS-APPELLANTS,

v.

LAURA R. SCHWEFEL,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
GLENN H. YAMAHIRO, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Gary and Sandra Kramschuster (the Kramschusters), *pro se*, appeal an order of the small claims court dismissing their action against Laura R. Schwefel. The small claims court dismissed the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Kramschusters' action on the grounds that it belonged in family court, rather than small claims court. We affirm.

BACKGROUND

¶2 The Kramschusters are the maternal grandparents of S.L.V.-K., a minor child at the center of a long and contentious custody/paternity action between the Kramschusters' daughter and the father of her child. The custody/paternity action was litigated in Milwaukee County Family Court. On or about April 22, 2013, the Kramschusters filed a motion for grandparent visitation in the family court. In the summer of 2013, Schwefel was appointed the guardian *ad litem* for S.L.V.-K. Schwefel remained the guardian *ad litem* throughout the duration of the thirteen-month custody litigation.

¶3 Ultimately, the family court issued an order awarding the father sole custody and primary placement of the child, but also allowing supervised placement with the mother and the Kramschusters. The family court also ordered that:

The Guardian ad Litem fees shall be divided as follows:
25% Maternal Grandparents, 35% Father, and 40% Mother.
Each party shall pay a minimum of \$200 per month
towards their share of the GAL fees commencing
December 1, 2014.

¶4 The Kramschusters made five \$200 payments, following the family court's order, from December 2014 through April 2015. The Kramschusters then stopped making payments. Instead, in April 2015, they filed an action in small claims court against Schwefel alleging five acts of theft—one for each of the months the Kramschusters paid \$200 towards Schwefel's guardian *ad litem* fees.

¶5 At the hearing before the small claims court, the Kramshusters argued that the family court did not determine what the final guardian *ad litem* fee actually was, but rather, just set a fixed amount that each party had to pay monthly.² They argued that they did not owe Schwefel any fees, were entitled to their money back, and were entitled to a jury trial to resolve the matter. The small claims court dismissed the action, stating that the matter involved a family court order and should be resolved in family court.

¶6 After the hearing, Schwefel ultimately filed a motion for contempt in the family court proceedings based on the Kramshusters' failure to pay the guardian *ad litem* fees.

¶7 This appeal follows.

DISCUSSION

¶8 On appeal, the Kramshusters appear to argue that the small claims court violated their right to a jury trial on the issue of whether Schwefel should return the Kramshusters' payments. We disagree.

¶9 Our review of a small claims court's decision to dismiss a case is limited to whether the small claims court erroneously exercised its discretion. *See Haselow v. Gauthier*, 212 Wis. 2d 580, 590-91, 569 N.W.2d 97 (Ct. App. 1997). We will uphold a discretionary decision of the small claims court “if the [small claims] court has examined the relevant facts, applied a proper standard of law,

² Based on the Kramshusters' focus on the family court order, under the guise of a small claims action which they claim is based on “theft” pursuant to the family court order, the small claims court could reasonably have concluded that the Kramshusters were simply forum shopping, *i.e.*, when they failed to get their preferred outcome in family court, they tried to get a different court to rule favorably on their claims.

and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” See *id.* at 591 (citation omitted). Whether a court has jurisdiction is a question of law, which is reviewable *de novo*. See *Dragoo v. Dragoo*, 99 Wis. 2d 42, 43, 298 N.W.2d 231 (Ct. App. 1980).

¶10 The small claims court did not erroneously exercise its discretion when it dismissed the Kramschusters’ action and ordered that the matter be resolved by the family court. The Kramschusters’ action is based on an order of the family court. Pursuant to WIS. STAT. § 767.407(6), the family court had the discretion to apportion the guardian *ad litem* fees. At the hearing before the small claims court, the Kramschusters expressed confusion about the family court’s payment scheme and argued that (contrary to the specific terms of the family court order) they were not responsible for the guardian *ad litem* fees. However, it is undisputed that the Kramschusters initially made five payments each of \$200. The Kramschusters do not explain how *their compliance* with the family court order resulted in *theft by Schwefel*—the person they were ordered to pay. The small claims court reasonably and properly concluded that any confusion the Kramschusters have, or any challenges they wish to make, regarding the guardian *ad litem* fees already ordered by the family court should be addressed by the court that determined the fees, *i.e.*, family court.

¶11 Schwefel has filed a contempt motion in family court based on the Kramschusters’ failure to continue the payments ordered by that court. To resolve the contempt motion, the family court must necessarily address its order setting the guardian *ad litem*’s compensation. It would be a waste of judicial resources for both the family court and the small claims court to address the same issue.

¶12 Finally, we note that the record contains no evidence that the Kramschusters made a written demand for a jury trial or that the Kramschusters paid a jury fee. Thus, pursuant to WIS. STAT. § 799.21(3), the Kramschusters waived any right to a jury before the small claims court.

¶13 For the foregoing reasons, we affirm the small claims court's conclusion that the Kramschusters' action against Schwefel must be addressed by the family court that issued the order.³

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

³ The Kramschusters have filed a motion for sanctions against Schwefel alleging that Schwefel was “dishonest” in her brief to this court about the date of Schwefel’s appointment as guardian *ad litem* in the underlying family court matter. Schwefel’s brief to this court states that she was appointed as the guardian *ad litem* on June 13, 2013, and reaffirmed as the guardian *ad litem* by a formal order dated July 23, 2013. According to circuit court records, Schwefel appeared in family court, in her capacity as a guardian ad litem, on June 13, 2013 as a “friend of the court at this point.” The family court appointed Schwefel as the guardian *ad litem* on July 23, 2013. We decline to impose sanctions based on any alleged misrepresentations regarding the date Schwefel was appointed guardian *ad litem* in the underlying family matter. We find Schwefel’s representations were not in any way “dishonest.”

